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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,971	09/14/2000	Gautam Bhaskar	CV0293	8921

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EXAMINER

MENON, KRISHNAN S

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/661,971	Applicant(s) BHASKAR ET AL.	
	Examiner Krishnan S Menon	Art Unit 1723	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 12 September 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-9 and 16-18.

Claim(s) withdrawn from consideration: 10-15.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: Explanation and Response to arguments in separate sheets.

Explanation of how the amended claims would be rejected:

1. Claims 1-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/30304 in view of Lynam (US 5,073,012).
2. Claims 1-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/30304 in view of Wollowitz et al (US5,593,823).

#### Response to Arguments

Applicant's arguments filed on 11/18/02 have been fully considered but they are not persuasive.

Applicant argues that the secondary references Lynam and Wollowitz do not rectify the deficiencies of WO '304. WO 304 has provided a polycarbonate container and teaches that "... it is chosen to be visible light transmissive material so that the heat is transmitted effectively..." (lines 15-24, page 4). Lynam reference is used as support to show that polycarbonate material filters the UV radiation, which the applicant agrees. That is the only purpose of Lynam reference. Wollowitz teaches deactivating pathogens in blood, which requires radiation of specific wavelengths,, and provides filters to that effect. Wollowitz is used to show that it is known to one skilled in the art to provide filters for filtering/tailoring the wavelength of radiation to suit the requirements.

Re argument that Lynam nor Wollowitz suggest modifying WO'304: this is not relevant. WO'304 suggests using only visible light, and by doing so implies that UV radiation is avoided (page 4 lines 15-24). Radiation of 190-400 nm is known as the UV range of radiation.

Re the argument of exceptional results from the data: The experiment does not identify and discriminate all other influential factors. At least two factors are identified as having an effect in the experiment, filtering UV light and exogenous thrombin. The % FPB (last col of table 2) show only 3/6 pairs (50%) show a significant increase in %FPB with UV filter, which cannot be considered as a marked increase 3/6 sample pairs have exogenous thrombin, and all of them showed consistent and significant increase in the %FPB. The data seems to be more appropriate to show the effect of exogenous thrombin. (Examiner assumes that with and without UV filter in the experiment implies with/without additional UV filter and the centrifuge container used is made of polycarbonate).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the primary reference teaches in page 6, lines 21-26, "The apparatus of Fig 1 is used in such a manner that the container with its content is subjected to centrifugation heat source, which is preferably described herein as a halogen bulb 26 is arranged substantially opposite the area above the piston 26, cf. the diagrammatic view of FIG. 1, said halogen bulb being adapted to subject this portion of the container 10 to a visible light" which indicates that the halogen bulb is not used as is, but 'adapted to provide visible light'. Again in page 10, primary ref teaches "The above constants A and B have been calculated in consideration of the visible light from the halogen bulb passing almost freely through the container wall 37, which is the case when said container wall is made of polycarbonate, which it often is.". One skilled in the art would recognize the need for visible light to be transmitted and preventing any undesirable radiation from passing through from this teaching.